

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

VERNEISA JACKSON,

Plaintiff,

v.

CORRECTIONS CORPORATION OF
AMERICA,

Defendant.

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* CIVIL ACTION NO: 3:11-CV-111-
* DHB- WLB

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**MOTION AND BRIEF IN SUPPPORT OF MOTION FOR LEAVE
FOR PLAINTIFF TO FILE SUPPLEMENTAL RESPONSE TO
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

NOW COMES Verneisa Jackson, Plaintiff in the captioned action, by and through the undersigned counsel, and moves this Court, for leave to allow Plaintiff to file her supplemental response under Fed. R. Civ. P. 56 to Defendant’s Motion for Summary Judgment and shows:

INTRODUCTION

This is an employment discrimination and retaliation case under 42 U.S.C. Section 1981 (“Section 1981”) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e. Plaintiff also asserts overtime and retaliation claims under 29 U.S.C. Section 201 *et seq.* (“FLSA”), and claims for intentional infliction of emotional distress and constructive discharge under Georgia law. On

November 21, 2013, Defendant filed its motion for summary judgment. [Doc. 62]. Plaintiff, through counsel, responded to Defendant's Motion on December 16, 2013. [Doc. 66].

Since the filing of Plaintiff's response, Plaintiff has prepared a supplemental response that she wishes to file with the Court. In her supplemental response, Plaintiff raises additional arguments and evidence which she contends creates genuine issues of material facts as to some of her claims. These arguments and evidence were not raised in the response to summary judgment prepared and filed by her counsel and she should be given an opportunity to present this evidence and raise these arguments with the Court on a *pro se* basis. Plaintiff seeks leave to amend and supplement the motion before a reply is due and such supplementation and amended pleadings will not unduly delay this litigation. The proposed supplemental response and pleadings are filed contemporaneously with this Motion. Plaintiff's counsel tried to reach Defendant's counsel to discuss his consent to this motion, but was unable to reach him.

ARGUMENT AND CITATION OF AUTHORITY

If a non-moving party fails to properly address a moving party's allegations in support of summary judgment, Fed. R. Civ. P. 56(e) permits a this Court to give the non-moving party an opportunity to properly support or address another party's allegations of undisputed fact in support of a motion for summary judgment or

“issue any . . . appropriate order,” regarding the same. Here, Plaintiff submits that she has additional facts and arguments which, if successful, will establish genuine issues of material facts involving certain of her claims. She has submitted a supplemental response to Defendant’s motion for summary judgment, statement of facts in dispute, response to Defendant’s statement of undisputed fact and a declaration, affidavits and exhibits in response to Defendant’s motion. She should be able to assert this evidence and argue these issues in response to Defendant’s motion for summary judgment. The Supreme Court has recognized that “leave [to amend] shall be freely given when justice is required.” Leave should be liberally construed to facilitate the determination of claims on the merits. *Shipner v Eastern Airlines, Inc.*, 868 F.2d 401, 407 (11th Cir. 1989). No substantial countervailing reasons exist to deny leave to Plaintiff in this situation. Plaintiff has not acted dilatorily or in bad faith, or where the party seeking amendment has repeatedly failed to cure deficiencies by previously allowed amendments. *Id.*; see *Diesel Repower, Inc. v. Islander Investments, Ltd.*, 271 F.3d 1318, 1322 (11th Cir. 2001). Furthermore, Leave to file the supplemental motion in no way causes undue prejudice to Defendant. The amended response merely addresses and responds to matters already raised by Defendant in this case. In sum, justice will be best served by allowing leave to amend.

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiff leave to file her supplemental response to Defendant's motion for summary judgment and accompanying documents.

This 30th day of December, 2013.

/s/ Ainsworth G. Dudley

Ainsworth G. Dudley
Georgia Bar No. 231745
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for opposing party in the foregoing matter with a copy of the attached pleading by this Court's electronic filing system and by depositing a copy of the same in the United States Mail in a properly addressed envelope with adequate postage thereon to ensure delivery to:

John T.L. Koenig, Esq.
BARNES & THORNBURG LLP
Prominence in Buckhead, Suite 1700
3475 Piedmont Road, N.E.
Atlanta, GA 30305

This 30th day of December, 2013.

/s/ Ainsworth G. Dudley
Ainsworth G. Dudley
Georgia Bar No. 231745
Attorney for Plaintiff

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